

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

346A0373

HOUSE ENGROSSED NO. **SB122** - 2/25/97

Introduced by: Senators Whiting, Benson, Halverson, and Lawler and Representatives Wetz, Belatti, Duniphan, Kooistra, and Peterson (Bill)

1 FOR AN ACT ENTITLED, An Act to eliminate the requirement of a transfer hearing in certain
2 proceedings against a delinquent child.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 26-11 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any delinquent child sixteen years of age or older against whom Class A, Class B, Class 1,
7 or Class 2 felony charges have been filed shall be tried in circuit court as an adult. However, the
8 child may request a transfer hearing which shall be conducted pursuant to § 26-11-4 to determine
9 if it is in the best interest of the public that the child be tried in circuit court as an adult. In such
10 a transfer hearing, there is a rebuttable presumption that it is in the best interest of the public that
11 any child, sixteen years of age or older, who is charged with a Class A, Class B, Class 1, or Class
12 2 felony, shall be tried as an adult.

13 Section 2. That § 26-11-4 be amended to read as follows:

14 26-11-4. The Except as provided in section 1 of this Act, the circuit court may, in any case
15 of a delinquent child against whom criminal felony charges have been filed, after transfer hearing,

1 permit such child to be proceeded against in accordance with the laws that may be in force in this
2 state governing the commission of crimes. In such cases the petition filed under chapter 26-8
3 shall be dismissed. The hearing shall be conducted as provided by this section.

4 At the transfer hearing, the court shall consider only whether it is contrary to the best interest
5 of the child and of the public to retain jurisdiction over the child.

6 The following factors may be considered by the court in determining whether a child should
7 be transferred:

- 8 (1) The seriousness of the alleged felony offense to the community and whether
9 protection of the community requires waiver;
- 10 (2) Whether the alleged felony offense was committed in an aggressive, violent,
11 premeditated, or willful manner;
- 12 (3) Whether the alleged felony offense was against persons or property with greater
13 weight being given to offenses against persons;
- 14 (4) The prosecutive merit of the complaint. The state is not required to establish probable
15 cause to show prosecutive merit;
- 16 (5) The desirability of trial and disposition of the entire felony offense in one proceeding
17 if the child's associates in the alleged felony offense are adults;
- 18 (6) The record and previous history of the juvenile;
- 19 (7) The prospect for adequate protection of the public and the likelihood of reasonable
20 rehabilitation of the juvenile, if the juvenile is found to have committed the alleged
21 felony offense, by the use of procedures, services, and facilities currently available to
22 the juvenile court.

23 Written reports and other materials relating to the child's mental, physical, and social history
24 may be considered by the court, if the person who prepared the report and other material appears
25 and is subject to both direct and cross-examination.

1 If the court finds that a child should be held for criminal proceedings in a court of competent
2 jurisdiction, the court shall enter an order certifying to that effect. The order shall contain
3 findings of fact upon which the court's decision is based. The findings may not be set aside upon
4 review unless clearly erroneous, and due regard shall be given to the opportunity of the trial
5 court to judge the credibility of the witnesses. If an order of certification is made, the jurisdiction
6 of the original court as to the child concerned is terminated. However, the court to which the
7 proceedings are transferred may require the original court to hold the child in detention pending
8 proceedings in that court.

9 If the court finds that it is in the best interest of the child and of the public for the court to
10 retain jurisdiction, it shall proceed with the adjudicatory hearing. If the court to which any
11 proceeding regarding a delinquent child is transferred finds that it is in the best interest of the
12 child and of the public for the court to retain jurisdiction, the finding is definitive, during the
13 balance of the child's minority, as to the subsequent commission of any crime, petty offense, or
14 municipal ordinance violation, and the child may no longer be considered a child for the purposes
15 of this chapter. However, the finding is not definitive, if the delinquent child has been found not
16 guilty of the offense for which the original transfer was ordered.

17 Section 3. That § 26-11-10 be repealed.

18 ~~— 26-11-10. In any transfer hearing pursuant to § 26-11-4, there is a rebuttable presumption~~
19 ~~that it is not in the best interest of the public to retain jurisdiction over any child, sixteen years~~
20 ~~of age or older, who is charged with a Class A, B, 1, or 2 felony.~~

21 Section 4. That § 26-7A-26 be amended to read as follows:

22 26-7A-26. No apparent, alleged, or adjudicated abused or neglected child may be securely
23 detained at any time in a jail, lockup, or in any type of detention or temporary care facility
24 containing adult prisoners.

25 ~~An apparent or alleged delinquent child may be held in an adult lockup or jail for up to six~~

1 ~~hours for purposes of identification, processing, interrogation, transfer to juvenile facility, or~~
2 ~~release to parents if the delinquent child is physically separated from adult prisoners.~~

3 ~~— Any apparent, alleged, or adjudicated child in need of supervision or adjudicated delinquent~~
4 ~~child between the ages of fourteen and seventeen years of age may be held in an adult lockup or~~
5 ~~jail for up to seven days if physically separated from adult prisoners.~~

6 ~~— A child who has been formally transferred to adult court pursuant to § 26-11-4 may be held~~
7 ~~in an adult lockup or jail if the child is fifteen, sixteen, or seventeen years old and the child is~~
8 ~~alleged to have committed an offense defined as a crime of violence under subdivision 22-1-2(9)~~
9 ~~or of sexual contact under § 22-22-7.~~

10 An apparent, alleged, or adjudicated child in need of supervision or an apparent, alleged, or
11 adjudicated delinquent child fourteen years of age or older may be held in detention in an adult
12 lockup or jail if physically separated from adult prisoners subject to any restrictions under this
13 chapter or chapter 26-8A, 26-8B, or 26-8C.

14 A child who has been transferred to adult court pursuant to § 26-11-4 or a child who is being
15 tried in circuit court as an adult pursuant to section 1 of this Act may be held in detention in an
16 adult lockup or jail if physically separated from adult prisoners.

17 A child who has attained the age of majority who is under the continuing jurisdiction of the
18 court may be held in detention in an adult jail or lockup.

1 **BILL HISTORY**

2 1/23/97 First read in Senate and referred to Judiciary. S.J. 142

3 1/29/97 Scheduled for Committee hearing on this date.

4 1/29/97 Judiciary Do Pass, Passed, AYES 6, NAYS 0. S.J. 234

5 1/31/97 Senate Do Pass, Passed, AYES 32, NAYS 0. S.J. 268

6 2/3/97 First read in House and referred to Judiciary. H.J. 279

7 2/19/97 Scheduled for Committee hearing on this date.

8 2/19/97 Judiciary Do Pass, Passed, AYES 11, NAYS 0. H.J. 561

9 2/20/97 Deferred to another day. H.J. 623

10 2/21/97 Deferred to another day. H.J. 639

11 2/24/97 Motion to Amend, Passed. H.J. 665

12 2/24/97 House of Representatives Do Pass Amended, Passed, AYES 50, NAYS 17. H.J. 666